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Current activities of international organizations related to the harmonization and unification of international trade law

Note by the Secretariat*

Contents

		Paragraphs	Page
I.	Introduction	1-4	2
II.	Harmonization and unification of international trade law	5-63	3
A.	International commercial contracts	5-6	3
B.	International transport of goods	7-14	4
C.	Electronic commerce and new technologies	15-34	6
D.	Commercial arbitration and conciliation	35-39	10
E.	International payments	40-41	11
F.	Competition law	42-43	12
G.	Trade facilitation	44-46	12
H.	Insolvency	47-59	13
I.	Corporate governance	60-63	15

* This document was submitted late because of the need to undertake consultations on the content with relevant organizations.

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I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.[1] Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already under way and areas where unification work was not under way but could appropriately be undertaken.[2] Two reports of that nature have been prepared for consideration by the Commission at its thirty-ninth session in 2006 on procurement and security interests, contained in documents A/CN.9/598/Add.1 and A/CN.9/598/Add.2, respectively. Accordingly, those two topics are not addressed in this note.

3. This general report, prepared in response to resolution 34/142, is the second in a series which the Secretariat proposes to update and revise on an annual basis for the information of the Commission. It focuses on activities of international organizations primarily undertaken since preparation of the first paper (A/CN.9/584, May 2005) and related papers on electronic commerce (A/CN.9/579) and insolvency (A/CN.9/580/Add.1) and is based upon publicly available material and consultations undertaken with the listed organizations. This paper does not repeat information contained in the previous papers unless necessary to facilitate understanding of a particular issue.

4. The work of the following organizations is described in this report:

(a) United Nations bodies and specialized agencies

ITU	International Telecommunications Union
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNCTAD	United Nations Conference on Trade and Development
WIPO	World Intellectual Property Organization

(b) Other intergovernmental organizations

ADB	Asian Development Bank
APEC	Asia Pacific Economic Cooperation Commonwealth Secretariat
EBRD	European Bank for Reconstruction and Development
EC	European Commission
Hague Conference	Hague Conference on Private International Law
OTIF	Intergovernmental Organization for International Carriage by Rail

OECD	Organization for Economic Cooperation and Development
Unidroit	International Institute for the Unification of Private Law
World Bank	International Bank for Reconstruction and Development
WCO	World Customs Organization

(c) International non-governmental organizations

CTO	Commonwealth Telecommunications Organization
INSOL	International Association of Restructuring, Insolvency and Bankruptcy Professionals
IBA	International Bar Association
ICC	International Chamber of Commerce
III	International Insolvency Institute

II. Harmonization and unification of international trade law

A. International commercial contracts

Hague Conference

5. The Twentieth Diplomatic Session of the Hague Conference on Private International Law, held from 14-30 June 2005 in The Hague, unanimously adopted a Convention on Choice of Court Agreements ("the Choice of Court Convention") in international business-to-business cases. It is hoped that this instrument will complement the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"). The Choice of Court Convention addresses the obligation of a chosen court to hear the case, the obligation of a court not chosen in the original agreement to suspend or dismiss the case, and the obligation to enforce the judgment given by the chosen court. Specific rules clarify intellectual property and insurance issues as well as the treatment of damage awards and the relationship with other instruments. Currently, an Explanatory Report on the Convention is being prepared. Informal consultations on signature and ratification are under way.

Unidroit

6. Pursuant to the recommendation of the Governing Council of Unidroit, the Principles of International Commercial Contracts (PICC) are included as an on-going project in the work programme of the Institute.[3] Subsequent to the adoption of the fourth edition of the PICC (May 2004), the Governing Council, at its eighty-fourth session (18-20 April 2005), preliminarily approved the following topics for inclusion in a future edition: unwinding of failed contracts, illegality, plurality of creditors and debtors, conditions and suretyship and guarantees. A new working group is scheduled to hold its first session from 29 May-2 June 2006 to consider inclusion of those topics.

B. International transport of goods

1. Transport by sea

OECD

7. On September 2002, the OECD Council agreed that negotiations should commence on a new Shipbuilding Agreement to review and address factors distorting normal competitive conditions in the shipbuilding industry. In particular, the Agreement was to address government support measures, especially subsidies, pricing and other related practices. The target date for finalizing the negotiations was the end of 2005.[4]

8. While substantial progress was made in developing key elements of the draft Agreement, some serious difficulties remained, and in September 2005 delegates to the Special Negotiating Group (SNG), established to advance the multilateral negotiations, agreed to "pause" those negotiations in order to allow the parties to reflect on their positions, consult and observe developments in the market, possibly resuming when the environment for their success had improved.

UNCTAD

9. UNCTAD continued its participation at sessions of the UNCITRAL Working Group III (Transport Law), submitting comments providing technical analysis on the issues under consideration and highlighting implications for developing countries, with respect to the development of a new international convention to govern the carriage of goods by sea as well as multimodal transport including a sea-leg.

2. Transport by land

UNECE

10. UNECE is working on a Protocol to the Convention on the Contract for the International Carriage of Goods by Road[5] (Geneva, 19 May, 1956) (CMR) (prepared by Unidroit), aimed at the introduction of electronic consignment notes. The draft Protocol has been prepared by Unidroit. At its 99th session in October 2005, the Working Party on Road Transport (SC.1) decided to establish an editorial committee to finalize the drafting of the text of the additional Protocol. The editorial committee, comprising both Unidroit and UNCITRAL, has been requested to prepare a new draft for adoption at the 100th session of SC.1 in October 2006, taking into account written and oral comments made by members of SC.1 and without modifying the substance of the Unidroit proposal.

OTIF

11. OTIF is currently seeking to widen the scope of the Convention concerning International Carriage by Rail (9 May 1980)[6] and harmonize it with other transport legislation in order to make possible, in the longer term, through-carriage by rail under a single legal system regime from the Atlantic to the Pacific. The new COTIF, as modified by the Protocol of Vilnius (adopted on 3 June 1999, entry into force expected on 1 June 2006) will allow direct carriage under a single legal regime (Uniform Rules concerning the Contract for International Carriage of Goods by

Rail—CIM) as long as at least either: (a) the place of taking over the goods or (b) the place designated for delivery, is situated in a Member State of COTIF and the parties to the contract of carriage so agree, for example, by using the CIM consignment note. OTIF will take on new tasks as soon as the 1999 Vilnius Protocol enters into force.

3. Inland waterway transport

UNECE

12. The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI Convention),[7] adopted at a Diplomatic Conference organized jointly by CCNR, Danube Commission and UNECE (Budapest, 25 September-3 October 2000), entered into force on 1 April 2005. It currently has six Contracting Parties: Croatia, the Czech Republic, Hungary, Luxembourg, Romania and Switzerland. The CMNI Convention governs the contractual liability of parties to the contract for the carriage of goods by inland waterway and provides for the limitation of the carrier's liability.

4. Transport by air

UNCTAD

13. The carriage of goods by air is emerging as a field of increasing economic importance to developing countries. Liability arising from the carriage of goods by air is governed by several international conventions, namely the Warsaw Convention 1929,[8] the Warsaw Convention as amended by a number of Protocols[9] and supplemented by the Guadalajara Convention 1961[10] (collectively known as "Warsaw system of conventions"), and the Montreal Convention 1999.[11] As a result of the co-existence at the international level of different uniform liability regimes, the international legal framework governing the carriage of goods by air is particularly complex. Against this background, UNCTAD is preparing a guide on aspects of air law, designed to assist developing countries in their understanding of the complex international framework of air law conventions, including in respect of effective uniform implementation of conventions at the national level. The guide is currently being finalized for publication and will in due course be available electronically at http://www.unctad.org/ttl/legal.

5. Intermodal transport

UNECE

14. As a result of the current work of UNCITRAL on transport law, the UNECE Working Party on Intermodal Transport and Logistics had postponed work on the preparation of a civil liability regime applicable to European intermodal transport covering road, rail, inland water and short sea transport. In February 2005, the UNECE Inland Transport Committee requested the Working Party to continue to closely monitor and evaluate all pertinent activities in this field, particularly those of UNCITRAL and to prepare, if appropriate, proposals for solutions at the Pan-European level. At its 29-30 March 2006 session, the Working Party reviewed a study commissioned by the European Commission and considered whether to pursue work on a pan-European solution establishing uniform intermodal liability rules that concentrate the risk on one party and provide for liability of the

contracting carrier for all types of losses irrespective of the modal stage where such loss occurs.[12] Such work would be carried out in close cooperation with intergovernmental organizations, such as ECMT and UNCTAD as well as with competent industry groups.

C. Electronic commerce and new technologies

APEC

15. In 2004, the Electronic Commerce Steering Group (ECSG) agreed to continue its activities to counter spam. It undertook a survey in 2005 on individual economies' approaches to spam, and considered possible cooperation with the APEC Telecommunication and Information Working Group. A preliminary summary of the APEC questionnaire on spam was presented to APEC in 2005.[13]

16. As part of its goal of building trust in e-commerce, ECSG is considering ways to better protect consumers from fraudulent and deceptive practices when buying goods and services online. Work is under way to help economies implement APEC's Voluntary Consumer Protection Guidelines for the On-line Environment.[14] These cover international cooperation, education and awareness, private sector leadership, online advertising and marketing and the resolution of consumer disputes.

17. In 2005, the ECSG stated that it would continue its work on information privacy, spam, paperless trading, digital economy initiatives and would review the format of the Stocktake of Electronic Commerce Activities, a business-friendly inventory of the electronic commerce activities currently being undertaken by APEC forums.[15] From 20 to 21 February 2006, APEC convened a Symposium on Information Privacy Protection in E-Government and E-Commerce,[16] and on 22 February 2006, a meeting of the Paperless Trading Sub-Group,[17] alongside a meeting of the Data Privacy Sub-Group[18] from 22 to 23 February 2006, in Vietnam. From 18 to 21 May 2006, the 2nd APEC E-Commerce Business Alliance Forum[19] will be held in Qingdao, China to discuss key e-commerce issues to accelerate the overall development process of e-commerce in the Asia-Pacific region.

Commonwealth Secretariat

18. The Commonwealth Action Programme for the Digital Divide (CAPDD) (adopted in 2002) comprises the report and recommendations of the Commonwealth Expert Group on Information Technology. It aims to provide greater access to ICT for Commonwealth countries to bridge the digital divide. The renewed focus of CAPPD in 2005 has targeted developing policy and regulatory capacity; modernizing education and skills development; entrepreneurship for poverty reduction; promoting local access and connectivity and regional networks, local content and knowledge. A series of workshops on the digital divide was conducted in 2005.[20]

19. Another area of focus is electronic governance for good governance. Training was delivered on developing e-Government and e-Business strategies for senior technical ICT staff in the public sector, at the legislative level, to assist member countries in conceptualizing e-Governance strategies and the adaptation and adoption of the Secretariat's e-Governance model laws. From 27 February to

3 March 2006, the Commonwealth Secretariat convened a Regional Programme on e-Governance for Senior Public Professionals in Nicosia, Cyprus.[21]

20. The Commonwealth Secretariat has published books on e-commerce, and some of the more recent publications[22] include Trusted Services and Public Key Infrastructure (published in 2001), Law in Cyber Space (published in 2001), Electronic Governance and Electronic Democracy: Living and Working in the Wired World (published in 2001), Breaking the Digital Divide: Implications for Developing Countries (published in 2003), Electronic Connectivity for Workgroups: Working in the Wired World (published in 2005).

EC

21. A study in October 2003 by the Interdisciplinary Centre for Law and Information Technology at the request of the EC into the legal and practical issues concerning the implementation of the EU Directive on Electronic Signatures[23] found that most of the EU Member States had more or less consistently transposed the EU Directive on Electronic Signatures into national legislation, but that the actual use of electronic signatures in the EU was limited with the number of supervised and accredited certification service providers issuing qualified certificates in the EU varying from country to country. A new report from 2006[24] found that the need for the legal recognition of electronic signatures has been met by the transposition of the Directive into the legislation of the Member States and found no need to revise the Directive at this stage. Nonetheless, given the problems of mutual recognition of e-signatures and interoperability at a general level which has impacted negatively on the free circulation of electronic signatures, the Commission will organize a series of meetings with Member States and relevant stakeholders to address the following issues: differences in the transposition of the Directive; clarification of specific articles of the Directive; technical and standardization aspects; and interoperability problems.

Hague Conference

22. The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Apostille Convention) facilitates the circulation of public documents that emanate from one State party to the Convention and need to be produced in another State party. It does so by replacing the cumbersome and frequently costly formalities of a full legalisation process by the mere issuance of an Apostille. Recommendation Number 24 of the Special Commission of the Hague Conference on the Practical Application of, inter alia, the Apostille Convention requires that State parties and the Permanent Bureau "work towards the development of techniques for the generation of electronic Apostilles". To that end, the Hague Conference on Private International Law and the Union of Latin Notaries organized the "First International Forum on e-Notarization and e-Apostilles" on 30 and 31 May 2005 in Las Vegas. The Forum unanimously confirmed that the spirit and letter of the Apostille Convention does not constitute an obstacle to the usage of modern technology and that the Convention's application and operation can be further improved by relying on such technologies. As a result, the Forum encouraged the development and application of e-Apostilles and e-Registers.

23. A Second Forum will be held in 2006. In addition, the Hague Conference and the National Notary Association of the United States will be launching the e-APP (electronic Apostille Pilot Program). The purpose of the e-APP is to further strengthen the efforts towards the implementation and promotion of an effective, low-priced, safe and sound system of electronic Apostilles (e-Apostilles) and electronic Registers of Apostilles (e-Registers).

ITU

24. ITU, a specialized agency of the United Nations, has the lead role in organizing the World Summit on Information Society (WSIS).[25] Envisaged in two phases, the first Summit was held in Geneva from 10 to 12 December 2003, where agreement was reached on the Declaration of Principles[26] (which set out the principles upon which to develop the global information society) and a Plan of Action[27] (which set out concrete action lines to advance the achievement of internationally-agreed development goals, including those in, inter alia, the Millennium Declaration,[28] by promoting the use of information and communications technologies (ICT) based products, networks, services and applications and helping countries overcome the digital divide). The second phase of WSIS was held in Tunis from 16 to 18 November 2005[29] focusing on implementing the agenda for development of achievable targets by 2015, and seeking consensus on unfinished business, inter alia, on the question of Internet governance.[30]

25. During this second phase, spam was identified as a potential threat to the full utilization of the Internet and electronic commerce. ITU is implementing a series of activities on countering spam, in the shorter and longer term, to foster international cooperation, develop harmonized policy frameworks, and promote the exchange of information and best practices, as well as to provide support to developing countries in the field of spam.[31] ITU issued two resolutions[32] dealing with spam and also continues to maintain a website,[33] launched in 2004, which contains information concerning over forty countries that have taken anti-spam measures.

26. A survey was prepared for the WSIS Thematic Meeting on Cybersecurity, which took place from 28 June to 1 July 2005 and which found that regulators do not address the problem of spam in a substantive way. The paper recommended that legal rules specifically designed for spam should be adopted and existing laws on data protection and anti-fraud provisions should be aligned with anti-spam regulations.[34]

OECD

27. In November 2004, OECD launched a new questionnaire intended to gather relevant information on the current usage of authentication across borders in OECD Member Countries. A synthesis report[35] was discussed at the meeting of the Working Party on Information Security and Privacy in May 2005 with the central aims being to: find examples of current offerings and actual implementation of authentication across borders; identify actual or potential barriers to current cross border use of digital signatures from the supplier/user perspective; and explore the extent to which cross border offerings of authentication meet or do not meet transaction needs. The "Report on the Use of Authentication across Borders",[36] published in November 2005, found robust developments in relation to

authentication in the public sector and, in general, non-discriminatory approaches to foreign signatures and services. It also found that public key infrastructure had become the method of choice for authentication. However, the report also found continuing problems in achieving interoperability due to the absence of recognition of foreign authentication services and lack of acceptance of credentials issued by other entities. The Report recommended the development of guidelines or best practices to facilitate interoperability, as well as the development of a framework for determining the prerequisites of authentication methods and initiatives to promote the use of authentication.

28. On 8 March 2006, OECD conducted a Workshop on the Future of the Internet.[37] The workshop, which brought together policy-makers, leading academics, private sector organizations, and civil society organizations to discuss the trends shaping the future of the Internet, explore the various approaches—technical, regulatory, and economic—that are being taken or can be taken to create new functionality for and increased trust in the Internet, promote its sustained growth and adoption, and identify opportunities for increased international cooperation on pressing issues.

UNCTAD

29. The ninth session of the Commission on Enterprise, Business Facilitation and Development (Geneva, 22-25 February 2005) of the Trade and Development Board approved recommendations on electronic commerce strategies for development. It recommended that UNCTAD should carry out research and policy oriented analytical work on the implications for trade and development of the different aspects of information and communications technologies (ICT) and e-business that fall within its mandate, with particular focus on those sectors of main interest to developing countries. It also recommended that UNCTAD continue to work, inter alia, in the field of ICT measurement, including the development of statistical capacity, to enable developing countries to measure the access, use and impact of ICT and monitor progress in this field. It further recommended that UNCTAD contribute to capacity-building in the area of ICT for development, particularly in trade sectors of special interest to developing countries or those that can be profoundly enhanced through the use of ICT, such as tourism, small and medium-sized enterprise (SMEs) development and poverty alleviation.

30. UNCTAD publishes annually its Information Economy Report, which has replaced the E-Commerce and Development Report that it published annually since 2000. The Report focuses on trends in ICT, such as e-commerce and e-business, and on national and international policy and strategy options for improving the development impact of these technologies in developing countries. The Report is available at www.unctad.org/ecommerce.

UNECE

31. At a UNECE-sponsored forum on paperless trade in international supply chains held on 20 and 21 June 2005,[38] UN/CEFACT presented its draft revision of its Recommendation 6 on the Invoice for International Trade.[39] The revised Recommendation seeks to resolve the obstacles to e-invoicing, and to provide a solution that can easily be implemented by both SMEs and large companies.

32. More recently, a workshop on International Standards to Stimulate Paperless Trade was conducted on 20 and 21 February 2006.[40] The goal of the two-day workshop was to present important international standards for document and information harmonization and exchange in international trade, to discuss the national and regional adaptation and implementation of those standards and to exchange know how and best practice on pilot projects and initiatives in the region. The workshop aimed to develop recommendations on the development, adaptation and implementation of global standards in the Asia Pacific Region. This was followed by a three-day technical workshop on UNeDocs Data Modelling and document design from 22 to 24 February 2006, in which seminar participants developed an international trade document which integrates the specific requirements of the region.

UNESCAP

33. UNESCAP convened a forum, "Public-Private Partnerships for Development in Asia and the Pacific" in Jakarta, Indonesia on 7 and 8 April 2006, which discussed, inter alia, issues on the development of information and communication technology.[41]

WCO

34. In April 2006, a WCO IT Conference & Exhibition will be held in Bangalore, India, to address, inter alia, issues involved in outsourcing, (such as, whether outsourcing or off-shoring of IT functions to a specialized service provider can help customs maintain a sustainable ICT infrastructure that responds to the demands from all its stakeholders, in particular the private sector) and also, the lessons to be learned from past experiences.[42]

D. Commercial arbitration and conciliation

CTO

35. The CTO Council adopted the Protocol setting up the CTO Alternate Dispute Resolution Centre[43] ("ADR Centre") at its 45th meeting on 7 September 2005 in Yaoundé, Cameroon, in response to the growing number of disputes between commercial operators and between regulators and operators, or between governments and operators in CTO member countries. The ADR Centre assists in the settlement and resolution of disputes in the field of ICTs in accordance with its Adjudication Rules[44] (which provides for both online adjudication as well as full adjudication), Early Neutral Evaluation process[45] and its Arbitration Rules.[46] The CTO consulted with UNCITRAL in the drafting of these rules.

ICC

36. Following on from the adoption of a guide to the ICC Rules for Expertise in 2004, an outline for explanatory notes entitled "Practice of Expertise in ICC Expertise Dispute Resolution"[47] was presented to the ICC Commission on Arbitration[48] at its Meeting on 26 May 2005. The notes will cover topics such as the use of (i) experts in ICC Arbitration; (ii) experts under the ICC Rules for Expertise

as fact finders; and (iii) neutral experts as facilitators under the ICC ADR and Dispute Board Rules.

37. At its last meeting in Paris held on 22 May 2006, the Commission on Arbitration heard a proposal by the Steering Committee of the ICC Commission on Arbitration to create two new task forces being: (1) a task force to prepare suggestions on the reduction of time and costs in complex arbitrations; and (2) a task force on "amiable compositeurs".

38. As part of its regular publications, the ICC has recently published a new publication entitled "Parallel State and Arbitral Procedures".[49]

WIPO

39. In 2002, WIPO published a report, "Intellectual Property on the Internet: A Survey of Issues" that describes the impact of digital technologies on intellectual property and, in particular, on copyright and the international intellectual property system.[50] As part of this survey, WIPO undertook an analysis of the advantages and disadvantages of online dispute resolution.[51]

E. International payments

Hague Conference

40. In the context of the development of a convention on the international recovery of child support and other forms of family maintenance, the Hague Conference on Private International Law, with the assistance of UNCITRAL, is preparing proposals for medium-neutral provisions to ensure that central authorities can employ the most rapid means of communication under the future instrument to transfer funds payable as maintenance, including financial mechanisms of protection against foreign exchange fluctuations. The new Hague Convention could take account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology.

ICC

41. The ICC Commission on Banking Technique and Practice[52] is in the process of revising UCP 500, its universally used rules on letters of credit. It is also exploring the possibility of developing common practices in forfeiting. Issues being discussed include whether to allow discounting of a deferred payment credit, whether to retain the concept of a "reasonable time" for the acceptance or refusal of documents, and whether to remove the term "on its face" from the rules. Based on these discussions, the UCP Drafting Group will issue a further revised draft, which will then be sent to ICC national committees for comment. This draft, with any further revisions, will be discussed at the next meeting of the Banking Commission in May 2006 in Vienna. It is hoped that the final revision of the rules will be available to banks and practitioners in 2006. More information about the new rules can be found in ICC's authoritative quarterly newsletter, DCInsight, available at www.iccbooks.com.

F. Competition law

UNCTAD

42. In line with its mandate, provided by successive UNCTAD Conferences (the latest being the Sao Paulo Consensus, containing the outcome of UNCTAD XI in 2004) and the "Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (the Set), adopted by the General Assembly in 2005, UNCTAD has continued to assist developing countries including least developed countries, as well as economies in transition in the formulation, adoption, implementation and revision of competition and consumer protection laws and policies.

43. In November 2005, the Fifth United Nations Conference to Review All Aspects of the Set unanimously adopted a resolution, which, inter alia, recognized "the role that competition policy plays in promoting competitiveness, building entrepreneurship, facilitating market access and entry, enhancing the equity of the international trading system and ensuring that trade liberalization brings about development gains". The Conference further reaffirmed the validity of the Set and called upon all member States to make every effort to implement fully its provisions. States were invited to increase cooperation between their competition authorities and Governments, especially when anti-competitive practices occur at the international level, such cooperation being particularly important for developing countries and economies in transition. The Conference also recommended that the General Assembly convene a Sixth Review Conference under the auspices of UNCTAD in 2010. The Conference also agreed that the forthcoming November 2006 session of the Intergovernmental Group of Experts on Competition Law and Policy would consider four specific competition policy issues for better implementation of the Set, as they relate to: (i) sectoral regulators; (ii) hard-core cartels; (iii) cooperation and dispute settlement mechanisms; and (iv) subsidies.

G. Trade facilitation

UNCTAD

44. UNCTAD contributes to policy and research, technical assistance and capacity-building, seeking, inter alia, to promote the implementation of common standards in transport, trade and customs matters, particularly among developing countries. The provision of technical assistance and support to capacity-building is geared towards the revision and upgrading of administrative and legal frameworks along the lines of the provisions of various international conventions and other instruments relating to trade facilitation.

45. UNCTAD has assisted developing countries and least developed countries to build their capacity to effectively participate in the multilateral trade negotiations process on trade facilitation and logistics services. UNCTAD organized workshops, seminars and brainstorming sessions and produced technical notes on specific trade facilitation tools and measures; resource persons actively contributed to the WTO programme of workshops on trade facilitation. A number of Geneva-based delegates from developing countries and least developed countries participated in the above-mentioned workshops with a view to strengthening the working relationship

between WTO delegates in Geneva and capital-based Government officials involved in trade facilitation.

46. UNCTAD also contributes actively to the work of the United Nations Centre for Trade Facilitation and Electronic Business, International Trade Procedures Working Group, International Trade and Business Processes Group 15 related to a revision of Recommendation 12 "Measures to Facilitate Maritime Transport Documents Procedures".

H. Insolvency

ADB

47. In April 2005, ADB presented its final report entitled "Regional Technical Assistance (RETA) 5975: Promoting Regional Cooperation in Insolvency Law Reforms", covering cross-border insolvency, informal workout practices and the intersection between secured transactions and insolvency law regimes.

48. This work by ADB led to consultation meetings with Asian Bankers Association (ABA) member banks in 2005 to discuss a draft model agreement for company restructuring developed by the RETA consultants. In October 2005, the ABA formally adopted a set of guidelines for informal workouts and endorsed a Model Agreement for Company Restructuring for use by financial institutions throughout the region. The ABA also released a position paper, "Providing the Legal and Policy Environment to Support Effective Informal Workout Regimes in the Asia-Pacific Region" which recommends (a) adoption of a fast-track formal workout regime; (b) enactment of legislation providing for Creditors' Voluntary Liquidation or Voluntary Administration; (c) promotion of a regional centre or centres for the resolution by arbitration of cross-border disputes; (d) strengthening of cross-border cooperation and assistance in insolvency cases; and (e) the undertaking of measures to enhance institutional capacity.

INSOL

49. INSOL is currently developing several publications to be launched within the next two years:

(a) Financing in Insolvency Proceedings. This publication, due to be launched in May 2006 will have 12 country chapters covering Australia, Brazil, Canada, Germany, the Hong Kong Special Administrative Region of China, India, Japan, Netherlands, Poland, South Africa, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Each country chapter will cover the different insolvency procedures that are available, and to what extent lenders get involved in providing finance to insolvent companies and related issues such as getting security, priority given to new lenders, and the role of the judicial process; and

(b) INSOL Lenders' Group project on Credit Derivatives. INSOL has initiated a project to produce guidance for insolvency practitioners and others on matters relating to the impact of credit derivatives in restructuring procedures. The objective of the publication will be to raise awareness and promote understanding of relevant issues, and provide a point of reference for those involved in restructuring.

The first working draft has been completed, and INSOL hopes to have this publication ready for distribution in September 2006.

50. Several other projects are being discussed internally at present. These include a publication on secured transactions, insolvency issues in the Asian region, and on distressed debt trading.

World Bank

51. In late 2005, the World Bank staff finalized the Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, which have been used since 2001 in assessing countries' insolvency and creditor rights systems, in the form of Reports on the Observance of Standards and Codes (ROSCs) and made them available for comment on the World Bank Global Insolvency Law Database (GILD) website.

52. Consultations between the World Bank, the UNCITRAL secretariat and the International Monetary Fund have achieved (a) consistency between the World Bank Principles and Guidelines, on the one hand, and the UNCITRAL Legislative Guide on Insolvency Law and the draft UNCITRAL Legislative Guide on Secured Transactions, on the other hand, (b) the development of a unified international standard in the area of insolvency law, and (c) the development of a ROSC Assessment Methodology. The complementary perspectives of the Principles and the Legislative Guide serve as important reference points for countries to evaluate and strengthen their insolvency and creditor rights systems in line with generally recognized standards of good practice. Given the international consensus on best practices reflected in the Bank's Principles and in the Recommendations that form part of the UNCITRAL Legislative Guide, the staffs of the Bank and the Fund will recommend that their respective Executive Boards recognize these Principles and Recommendations as constituting the unified standard for insolvency and creditor rights systems for the purpose of the Bank/Fund initiative on standards and codes. Insolvency and Creditor Rights ROSC assessments will be conducted on the basis of this unified standard on insolvency and creditor rights systems.

53. In the area of institutional frameworks related to insolvency, the World Bank has convened Global Judges Forums in 2003 and 2004 to encourage a dialogue among judges that oversee commercial enforcement and insolvency cases and to assist the World Bank to develop an Insolvency Court Practices Guide. A further forum is planned for 2006.

IBA

54. In May 2005, both the Section on Insolvency, Restructuring and Creditors Rights ("SIRC") and the Council of the IBA endorsed the UNCITRAL Legislative Guide on Insolvency Law.

55. The SIRC of IBA has established three new subcommittees: Insolvency Legislation and Legislative Reform and Harmonisation; Enforcement of Creditor's Rights; and Reorganization and Workouts. As international insolvency practice continues to evolve over the coming years, other Subcommittees may be created.

56. In addition to monitoring and reporting on developments in national insolvency legislation around the globe, the Insolvency Legislation and Legislative

Reform and Harmonisation Subcommittee will coordinate: (i) provision of expert staffing at working sessions of such world bodies; (ii) provision of expert presentations at programs and colloquiums organised by such world bodies; (iii) consultation; and (iv) drafting of submissions concerning legislative reform projects. All UNCITRAL related work will be coordinated directly with, and supervised by, SIRC's UNCITRAL Liaison.

57. The Subcommittee on Enforcement of Creditors Rights will focus on issues of interest to secured and unsecured vendors and lenders in liquidation and reorganization, including, inter alia, remedies, lien enforcement, extension of credit to insolvent or distressed debtors, inter-creditor priorities and protection of the value of collateral. The Reorganisation and Workouts Subcommittee will focus on both formal and informal restructuring, including, inter alia, issues relating to the negotiation, proposal, solicitation and litigation of plans of reorganization, schemes of arrangement, pre-packaged plans, compositions, expedited reorganization and out of court workouts.

III

58. In addition to its existing Committees, the III is establishing a committee on the use of arbitration in insolvency. It is also launching a joint project with The American Law Institute (ALI) to promote international approval and acceptance of the ALI's Principles for Cooperation in Transnational Cases.

OECD

59. The fifth meeting of the Forum on Asian Insolvency Reform (FAIR), organized by OECD in cooperation with APEC, the Australian Agency for International Development (AusAID), the Asian Development Bank, the World Bank and the Government of Japan, will take place in Beijing, PRC from 27 to 28 April 2006.

I. Corporate governance

EBRD

60. In 2005, EBRD completed an evaluation of the effectiveness (i.e. how the law works in practice) of legislation on corporate governance in all 27 countries of operation. The purpose of the initiative was to discover how corporate governance legislation is implemented and determine the effectiveness of mechanisms for a minority shareholder to obtain disclosure of corporate information and to obtain redress in case of breach of its rights. The results have been published in the Transition Report 2005 and will be detailed in the Spring 2006 edition of Law in Transition. The results of previous Legal Indicator Surveys (dealing with insolvency and enforcement of charges) are available on the EBRD website.[53]

OECD

61. The OECD Steering Group on Corporate Governance coordinates and guides the Organisation's work on corporate governance and related corporate affairs issues. Much of the teams' non-member country work on corporate governance is

carried out through Regional Roundtables. Meetings of the Regional Roundtables, including Eurasia, South Eastern Europe and Latin America held during 2005 and 2006 discussed, inter alia, corporate governance reform and enforcement. The agenda for the seventh Asian Roundtable on Corporate Governance in September 2005 included (i) corporate governance of banks, (ii) a stock take of progress in policy reforms since the publication of the Asian White Paper in 2003, (iii) the role of the board in implementing the OECD Principles of Corporate Governance, and (iv) corporate governance of state-owned enterprises.

62. In April 2005, OECD endorsed Guidelines on Corporate Governance of State-owned Enterprises. These new Guidelines provide the first international benchmark to help governments assess the way they exercise their ownership responsibilities vis-à-vis state-owned enterprises (SOEs). They are non-binding and complementary to the OECD Principles of Corporate Governance.

63. In 2005, OECD also published case studies on good corporate governance in Latin America, examining how eight companies from Brazil, Colombia and Peru improved their corporate governance practices. Based on their experiences, this report gives practical advice and solutions for other companies in Latin America that are considering reforming their governance structure.

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17* (A/36/17), paras. 93-101.

[2] Ibid., para. 100.

[3] For further information, see http://www.unidroit.org/english/workprogramme/study050/main.htm.

[4] OECD set up a Special Negotiating Group in 2002 to draw up a new Shipbuilding Agreement, with support from all OECD members and major world shipbuilding economies outside OECD. Source: 2004 OECD annual report, available at: http://www.oecd.org/dataoecd/28/49/31621929.pdf.

[5] Entry into force: 2 July 1961, United Nations, *Treaty Series*, vol. 399, p. 189. Source: http://www.untreaty.org.

[6] Entered into force on 1 May 1985.

[7] Budapest, 22 June, 2001. Entered into force 1 April 2005.

[8] Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 12 October 1929, entry into force: 13 February 1933. Available at http://www.icao.int/icao/en/leb/wc-hp.pdf.

[9] The protocols are listed and available at http://www.icao.int/eshop/conventions_list.htm#Conventions.

[10] Convention, Supplementary to the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, Guadalajara, 18 September 1961, entry into force: 1 May 1964. Available at http://www.icao.int/icao/en/leb/guadalajara.pdf.

[11] Convention on the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999, entry into force: 4 May 2003. Available at http://www.icao.int/icao/en/leb/mtl99.pdf.

[12] See, further, documents ECE/TRANS/162, para. 104 and TRANS/WP24/101, paras. 24-28, available at http://www.unece.org/trans/main/sc3/sc3.html. Report from the March session still to be issued.

[13] APEC Data Privacy Subgroup, Preliminary Summary of Member Economy Responses to the APEC Questionnaire on Spam (Doc No. 5), http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2005.html#DP51.

[14] A copy of these guidelines is available at: http://www.apec.org/apec/documents_reports/electronic_commerce_steering_group/2004.html.

[15] A copy of the Stocktake is available online at: http://www.apec.org/apec/apec_groups/som_special_task_groups/electronic_commerce.html.

[16] http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2006.html#SYM.

[17] http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2006.html#PTS.

[18] http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2006.html#DPM.

[19] http://www.apecsec.org.sg/apec/0506_E-CommerceForumExhibition.html.

[20] 18 March 2005, 2nd Co-ordinating Meeting on Commonwealth Action Programme for the Digital Divide, held in the United Kingdom; 14 June 2005, Consultation Workshop for Commonwealth Action Plan for Digital Divide (CAPDD), held in Malta; 11 August 2005, Commonwealth Action Plan for the Digital Divide Coordinating Committee Meeting, held in the United Kingdom; 5 September 2005, Digital Divide Programme hosted by CTO, held in Cameroon.

[21] The workshop examined contemporary theory of governance in a digital world, as reflected in the innovative thinking in various countries. It also looked at the application of e-governance applied to specific jurisdictions, and e-governance principles that address the needs of participating governments.

[22] For more information on publications, see http://publications.thecommonwealth.org/publications/html/DynaLink/cat_id/50/subcat_id/50/category_details.asp.

[23] http://europa.eu.int/information_society/eeurope/2005/all_about/security/electronic_sig_report.pdf.

[24] Report on the Operation of the Directive 1999/93/EC on a Community Framework for Electronic Signatures (2006) 120, final, 15 March 2006 available at: http://europa.eu.int/information_society/eeurope/i2010/docs/single_info_space/com_electronic_signatures_report_en.pdf.

[25] The WSIS has as its primary aim the development of an inclusive and equitable information society. Following a proposal by the Government of Tunisia, the International Telecommunication Union adopted a resolution at its Plenipotentiary Conference in Minneapolis in 1998 to hold a World Summit on the Information Society (WSIS) and to place it on the agenda of the United Nations. The United Nations General Assembly (resolution 56/183) accorded the lead role for the preparatory work to ITU in cooperation with other interested organizations and partners.

[26] http://www.itu.int/wsis/docs/geneva/official/dop.html.

[27] http://www.itu.int/wsis/docs/geneva/official/poa.html.

[28] Resolution 55/2, adopted 8 September 2000. The declaration may be found at: http://www.un.org/millennium/declaration/ares552e.htm.

[29] The Report of the Tunis phase of the World Summit on the Information Society, Tunis, Kram Palexpo, 16-18 November 2005 is available at http://www.itu.int/wsis/docs2/tunis/off/9rev1.doc. Among the topics of Internet governance discussed, the WSIS underlined the importance and necessity of international cooperation amongst law enforcement agencies in dealing with cybercrime, and developing necessary legislation for investigation and prosecution of cybercrime. The WSIS also resolved to deal with the problem of spam, calling upon stakeholders to adopt a multi-pronged approach to counter spam (please see para. 14 for more details on countering spam), and with the protection of privacy and personal information and data on the Internet. The WSIS reaffirmed its commitment to turning the digital divide into digital opportunity, and to ensuring harmonious and equitable development for all. The WSIS recognizes that Internet governance includes more than Internet naming and addressing, and that it includes public policy issues, such as, inter alia, critical Internet resources, the security and

safety of the Internet, and developmental aspects and issues pertaining to the use of the Internet. It also includes social, economic and technical issues including affordability, reliability and quality of service.

[30] The paragraphs relating to internet governance in the Declaration of Principles may be found at: http://www.wgig.org/docs/Paragraphs_Internet_Governance.doc. A Working Group on Internet Governance (WGIG) has been established to: develop a working definition of Internet Governance; identify the public policy issues that are relevant to Internet Governance; and develop a common understanding of the respective roles and responsibilities of governments, existing international organizations and other forums as well as the private sector and civil society from both developing and developed countries. For more information about the WGIG, see http://www.wgig.org/.

[31] Information about ITU initiatives to counter spam may be found at: http://www.itu.int/osg/spu/spam/intcoop.html.

[32] World Telecommunications Standardization Assembly, (WTSA) Resolution 51 on Combating Spam and Resolution 52 on Countering Spam by Technical Means.

[33] www.itu.int/osg/spu/spam/law.html.

[34] "A Comparative Analysis of Spam Laws: The Quest for a Model Law", Background paper for the ITU WSIS Thematic Meeting on Cybersecurity, available at http://www.itu.int/osg/spu/cybersecurity/docs/Background_Paper_Comparative_Analysis_of_Spam_Laws.pdf.

[35] The report was presented to the Working Party on Information Security and Privacy (WPISP) at its 19th meeting in May 2005 and was declassified by the Committee for Information, Computer and Communications Policy (ICCP) at its 49th session in October 2005.

[36] http://www.oecd.org/dataoecd/1/CO/35809749.pdf.

[37] For more information, see http://www.oecd.org/document/24/0,2340,en_2649_34223_36375896_1_1_1_1,00.html.

[38] Further information concerning the forum is available at http://www.unece.org/forums/forum05/welcome.htm.

[39] See further, http://www.unece.org/cefact/forum_grps/tbg/projects.htm.

[40] http://www.unece.org/trade/workshop/malaysia_feb06/welcome.htm.

[41] http://www.unescap.org/LDCCU/PLUS.asp.

[42] For more information, see http://events.wcoomd.org/aboutconfit2006india.htm.

[43] More information concerning the CTO ADR Centre and its related documents may be found at: http://www.cto.int/adr/index.php?page=about.

[44] http://www.cto.int/adr/adr_Adjudication_Service.doc.

[45] http://www.cto.int/adr/adr_ENE_Service.doc.

[46] http://www.cto.int/adr/adr_arbitration.pdf.

[47] http://www.iccwbo.org/policy/arbitration/id1785/index.html.

[48] Consists of more than 400 international legal specialists named by ICC national committees in some 82 countries. For more information, see http://www.iccwbo.org/home/international_arbitration/commission.asp.

[49] http://www.iccwbo.org/id3925/index.html.

[50] Available at http://www.wipo.int/copyright/ecommerce/en/ip_survey/ip_survey.html.

[51] WIPO, "Intellectual Property Rights on the Internet: A survey of the issues". WIPO/INT/02, December 2002, http://www.wipo.int/copyright/ecommerce/en/html/index.html.

[52] For more information, see http://www.iccwbo.org/home/banking/commission.asp.

[53] http://www.ebrd.org.